

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

for the

District of
Massachusetts
Boston DivisionFILED
IN CLERK'S OFFICE
2021 DEC 10 AM 11:51U.S. DISTRICT COURT
DISTRICT OF MASS.

Case No. _____

(to be filled in by the Clerk's Office)

LAMAR BRISON

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

JURY TRIAL DEMAND

WELLPATH AND CONMED, LLCSM in their official capacities as Government contractors; TERRY "Doe" in her individual and official capacity as an employee for WellPathSM & Conmed, LLC; and DIANA GARCIA in her official capacity as an employee for WellPathSM / Conmed. Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name Lamar Brison
 All other names by which you have been known: None
 ID Number W113847
 Current Institution Souza-Baranowski Correctional Center
 Address One Harvard Road, P.O. Box 8000
Shirley M.A. 01464
 City State Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name WellPathSM (Commed, LLC.)
 Job or Title (*if known*) Massachusetts Dept. of Corr. Health Service Contractor
 Shield Number N/A
 Employer Commed, LLC.
 Address 16 Chestnut Street, Suite 250
Foxborough MA 02035
 City State Zip Code
☐ Individual capacity ☒ Official capacity

Defendant No. 2

Name TERRY "Doe" (last name to be determined in suit)
 Job or Title (*if known*) Director of Nursing, Concord Health Service Unit
 Shield Number N/A
 Employer WellPathSM
 Address 965 Elm Street, P.O. Box 9160
Concord M.A. 01742
 City State Zip Code
☒ Individual capacity ☒ Official capacity

Defendant No. 3

Name Diana Garcia
 Job or Title (if known) WellPathSM Nurse Practitioner, Concord Health Service Unit
 Shield Number N/A
 Employer WellPathSM
 Address 965 Elm Street, P.O. Box 9160
Concord M.A. 01742
 City State Zip Code
☐ Individual capacity ☒ Official capacity

Defendant No. 4

Name _____
 Job or Title (if known) _____
 Shield Number _____
 Employer _____
 Address _____

 City State Zip Code
☐ Individual capacity ☐ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐ Federal officials (a *Bivens* claim)

☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

WellPath is sued through its agency, insurer, and contract
Defendants Terry and Garcia are being sued for Deliberate
Indifference to Mr. Brisson's serious medical needs in violation to
his 8th Amendment to the United States Constitution of America.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

(not-applicable)

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

Defendant Wellpath is contracted to provide adequate medical, dental and Mental Health services to DOC inmates
 Defendants Terry and Garcia are employees of Wellpath and is responsible for providing those contractual services to inmates for the State.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

(not-applicable)

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

Massachusetts Department of Corrections:: Concord.
 WellpathSM Health Services Unit

C. What date and approximate time did the events giving rise to your claim(s) occur?

Surgery: March 11, 2021
 Provider's Order for follow-up appointment: Two weeks from March 11, 2021
 Injuries: 2/3 weeks after missed follow-up

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

(See attached: "Complaint Attachment (D) Facts")

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

- 1) Substantial internal/external infection due to delay in or denial of out-side-Provider's follow-up medical appointments
- 2) Physical Pain and suffering at infection sites
- 3) Nerve damage; and
- 4) Extensive and/or anticipated rehabilitation to infected site.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

- 1) Compensatory damages in the amount of \$300,000 against Defendant WellPath for breach of third-party contract for adequate medical care;
- 2) Compensatory damages in the amount of \$125,000 against Defendant Terry for deliberately indifferent to Plaintiff's serious medical needs and need for medical follow-up per physician's orders which resulted in infection, unnecessary infliction and wanton of pain and suffering, and nerve damages and
- 3) Compensatory damages in the amount of \$75,000 against Defendant Garcia for Deliberate Indifference to Mr. Brisson's serious medical needs after she refused to prevent further injury after having knowledge Mr. Brisson suffered an injury of infection and possible other injuries caused by infection.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

- A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Massachusetts Department of Corrections - Concord

- B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

- C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☒ Yes

☐ No

☐ Do not know

If yes, which claim(s)? (all)

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☒ No

- E. If you did file a grievance:

1. Where did you file the grievance?

Concord

2. What did you claim in your grievance?

Defendant's failed to provide contracted medical services to Mr. Brisson by going against community surgeon's order for two week follow-ups which resulted in infection, undue delay in medical care, unforeseeable pain and suffering. Also denial of rehabilitation.

3. What was the result, if any?

Initial Grievance was denied
Grievance appeal was denied in part.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

Wellpath's Grievance Procedures were appealed to its Agencies highest level of appeal. Administrative Remedies exhausted.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

(Grievance filed)

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

(Grievance filed)

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

Mr. Brisson has and continue to inform (ed) Wellpath employees of needs for further medical treatment, rehabilitation, pain management, and of his continuity of pain and suffering. However, Wellpath continues not to carry out its contracting agreement in providing Mr. Brisson with care.

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

(Not-applicable)

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) N/A

Defendant(s) N/A

2. Court *(if federal court, name the district; if state court, name the county and State)*

N/A

3. Docket or index number

N/A

4. Name of Judge assigned to your case

N/A

5. Approximate date of filing lawsuit

N/A

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition.

N/A

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

N/A

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

NO

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☐ Yes☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) N/A

Defendant(s) N/A

2. Court *(if federal court, name the district; if state court, name the county and State)*

N/A

3. Docket or index number

N/A

4. Name of Judge assigned to your case

N/A

5. Approximate date of filing lawsuit

N/A

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition

N/A

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

N/A

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 11/27/21

Signature of Plaintiff

Lamar Brisson

Printed Name of Plaintiff

Lamar Brisson

Prison Identification #

W113841

Prison Address

One Harvard Road, P.O. Box 8000

Shirley

City

M.A.

State

01464

Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address